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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,567	03/23/2004	Martin Levesque	36804-74889	2584

23643 7590 03/27/2006

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INDIANAPOLIS, IN 46204

EXAMINER

RACHUBA, MAURINA T

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/806,567	Applicant(s) LEVESQUE, MARTIN	
	Examiner M Rachuba	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 13-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 17-20 been renumbered 16-19.

Election/Restrictions

2. Claims 4, 18 and 19 (as renumbered) are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 09 January 2006. Further, claims 13-17 read on figures 10-13, not on figure 2 that shows the elected species. Therefore claims 13-18 are also withdrawn. Applicant is reminded that on allowance of a generic claim, any withdrawn claims dependent from that generic claim will be rejoined. Claims 1-3 and 5-12 have been examined on their merits, please refer to the action below.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fuller, 1,491,601. '601 discloses the claimed invention, please refer to figures 1-8 and their descriptions.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller, '601 in view of Garvey 3,148,485. '601 does not explicitly disclose the size of a first compartment being different from the size a second compartment. '601, page 2, lines 130 through page 3, lines 7, teaches that the proportions of the compartments are made in accordance with the sizes of the work parts to be tumbled. '485, in a similar device, column 3, lines 29-40, teaches that the compartments may be differently sized. It would have been obvious to one of ordinary skill in the art to have provided '601 with the differently sized compartments taught by '485, to allow different sized parts to be tumbled at the same time.

6. Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller '601 in view of Garvey '485 as applied to claim 2 above, and further in view of Miller et al, 3,498,089. '601 as modified by '485 discloses a door that pivots open and closed, but does not disclose an actuator coupled to the door or the actuator being a hydraulic cylinder. '089 teaches providing a tumbling device with a door actuated by a

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hydraulic cylinder. It would have been obvious to one of ordinary skill to have provided '601 as modified by '485 with a hydraulic cylinder to actuate the door as taught by '089, figure 6, allowing the container to be sealed during use, column 1, lines 37-48. '089 further teaches a sliding door, the door sliding up and away from the opening. It would have been obvious to one of ordinary skill to have provided '601 with a sliding door, as taught by '089, to allow the door to be completely moved from the opening of the container, inherently allowing easy access to the container. Further, '601 does not disclose that the drive motor operative to cause rotation of the container about the longitudinal axis is a hydraulic motor or an electric motor, but does disclose that there is a motor to drive the pulley and gear system to rotate the containers. The examiner takes Official notice that the use of hydraulic or electric motors to drive machine tools is old and well known, and that one of ordinary skill would have considered it obvious to have provided either type of old and well known motor to drive the container of '601.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other similar types of tumbling devices are cited of interest.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Rachuba whose telephone number is 571-272-4493. The examiner can normally be reached on Monday-Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M Rachuba
Primary Examiner
Art Unit 3723



3/23/06